

Section VIII contains the parties' joint position regarding a pre-hearing conference. The patent at issue in this matter is U.S. Patent No. 5,179,949 ("the '949 patent").

I. Construction Of Claim Terms

The following are the claim terms upon which the parties have agreed to a construction:

Claim Term	Claim No(s).	Agreed Upon Construction
"cardiac pacemaker"	1-9	A programmable implantable stimulator device and leads extending from such device to the heart
"improved timing means"	1-9	improved AV timing means (the parties stipulate that this claim term is not governed by § 112 ¶ 6)
"whether the atrium and/or ventricles are being paced or sensed"	1-9	whether the atrium is being paced or sensed, whether the ventricle is being paced or sensed, or both are being paced or sensed
"sense a control signal"	2	sends a control signal

The Parties' Proposed Constructions of Disputed Claim Terms and Identification of Evidence is attached as Exhibit A.

II. Dr. Chirife's Identification Of Evidence

Dr. Chirife's proposed constructions for the disputed claim terms in Exhibit A identify intrinsic and extrinsic evidence upon which he may rely in support of their proposed constructions or to oppose Defendants' proposed claim constructions. In addition, for each disputed claim term, Dr. Chirife may rely upon the following:

- The claim language;
- The specification;
- The file history and cited prior art;
- Testimony of any party's witnesses and experts (as discussed below), and/or extrinsic evidence;
- Discovery from the present lawsuit; and

- All extrinsic evidence identified by Dr. Chirife in his Proposed Claim Constructions and Identification of Extrinsic Evidence served on Defendants on February 5, 2010 pursuant to Local Patent Rule 4-2.

In addition, for each disputed claim term, Dr. Chirife may also rely upon any intrinsic or extrinsic evidence identified by the Defendants, as well as any evidence obtained through claim construction discovery. In addition, Dr. Chirife reserves the right to amend, correct, or supplement his claim construction positions and supporting evidence in response to any change of position by the Defendants, or for other good cause. Finally, Dr. Chirife may rely upon documents setting forth positions taken by the Defendants on the scope of the asserted claims and/or claim construction for the identified terms and any documents referenced therein.

III. Defendants' Identification Of Evidence

Defendants may rely upon the following as evidence for construction of the claim terms listed on Exhibit A:

- The claim language;
- The specification;
- The file history and cited prior art;
- Testimony of any party's witnesses and experts (as discussed below), and/or extrinsic evidence;
- Discovery from the present lawsuit; and
- All extrinsic evidence identified by Defendants in their Proposed Claim Constructions and Identification of Extrinsic Evidence served on Plaintiff on February 5, 2010 pursuant to Local Patent Rule 4-2.

In addition, for each disputed claim term, Defendants may also rely upon any intrinsic or extrinsic evidence identified by Plaintiff, as well as any evidence obtained through claim construction discovery. In addition, Defendants reserve the right to amend, correct, or supplement their claim construction positions and supporting evidence in response to any change of position by the Plaintiff, or for other good cause. Finally, Defendants may rely upon

documents setting forth positions taken by the Plaintiff on the scope of the asserted claims and/or claim construction for the identified terms and any documents referenced therein

IV. Summary Of Each Opinion To Be Offered By Dr. Chirife's Witness In Support Of His Proposed Claim Construction

Dr. Chirife intends to offer the expert testimony of Professor John G. Webster, Professor Emeritus at the University of Wisconsin-Madison, 1550 Engineering Drive, room 2148, Madison, Wisconsin, 53706. Professor Webster will explain relevant scientific and technical principles and background technologies, the use of disputed terms in the patent specifications and prosecution histories, and testify as to the meaning of technical terms and terms of art that appear in the patents and prosecution histories, from the viewpoint of one of ordinary skill in the relevant art. Dr. Chirife likewise intends to offer Professor Webster's testimony to rebut the testimony of Defendants' witnesses, if any.

V. Summary Of Each Opinion To Be Offered By Defendants' Witnesses In Support Of Their Proposed Claim Construction

Defendants may offer expert testimony by Dr. Richard Luceri as to the following subject areas: the history and development of cardiac pacing technology, including the use of external programmers with implantable cardiac devices; the meaning of terminology commonly used in the cardiac pacing industry, including the term "automatic"; and a responsive analysis of any expert witness testimony submitted by Plaintiff.

VI. AGREEMENT REGARDING USE OF EXPERT TESTIMONY

The parties have agreed to the following procedure for the use of witnesses for claim construction. A party may use the testimony of an expert witness in support of its claim construction brief, so long as the other side is provided with the reasonable opportunity to depose the witness after such testimony is presented in support of a brief and a reasonable amount of time prior to the deadline for filing its responsive brief. In order to facilitate such deposition(s), the parties will schedule such depositions by March 12, 2010 and jointly request that the deadline for conducting claim construction discovery be extended from March 25, 2010 through the day before the filing of Dr. Chirife's P.R. 4-5(c) Reply Brief. If a party does not submit any such

witness testimony, the party will not be able to present live testimony at the hearing. Also, if the witness is not made available for a deposition, the party will not be able to present live testimony at the hearing. Any party that has complied with the requirements set forth in the preceding paragraph must notify the other party by April 29, 2010 whether they will present live testimony from an expert witness at the claim construction hearing.

VII. Length Of Claim Construction Hearing

The parties believe that three hours is sufficient for the Claim Construction Hearing.

VIII. Pre-hearing Conference

A pre-hearing conference is not scheduled, and, at this time, the parties do not anticipate the need for a pre-hearing conference.

Dated: February 25, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 25th day of February, 2010.

/s/ Hogene L. Choi
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